U.S. Department of Justice

United States Attorney
Eastern District of New York

271 Cadman Plaza East
Brooklyn, New York 11201

June 2, 2026

By ECF
Honorable LaShann DeArcy Hall
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Quezada Molina v. Lyons, et al.*, 26-CV-3184 (LDH)

Dear Judge DeArcy Hall:

This Office represents Respondents in this habeas action, in which Petitioner Christian Sebastian Quezada Molina ("Petitioner") challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"). *See* ECF No. 1 ("Petition" or "Pet."). Respondents respectfully write in accordance with the Court's Order to Show Cause dated May 28, 2026 ("Order"). The Court's Order directed Respondents to show cause as to why the Petition should not be granted. As explained below, the Petition, which assumes incorrectly that Petitioner is detained under 8 USC 1225, instead of 8 USC 1226(a), should be denied.

I. Relevant Background

Petitioner is a national of Ecuador. Declaration of Brenden Cuni, dated June 2, 2026 ("Cuni Decl.") ¶ 3; Ex. C to Cuni Decl. ("I-213"). On January 24, 2023, U.S. Customs and Border Protection ("CBP") officers encountered Petitioner in Sandusky, Ohio. Cuni Decl. ¶ 3; I-213. Petitioner admitted that he unlawfully entered the United States through Paso del Norte, Texas, bridge point of entry on December 6, 2022. Cuni Decl. ¶ 3; I-213. Subsequently, CBP officers arrested Petitioner. Cuni Decl. ¶ 3; I-213. However, on January 27, 2023, Petitioner was released from ICE custody and transferred to the U.S. Marshal's Service to serve as a material witness—Petitioner was not transferred back to ICE custody. Cuni Decl. ¶ 3. On January 30, 2023, Petitioner who had not yet been issued a Notice to Appear, and who was not in ICE custody any more, sought a bond redetermination with the Cleveland Immigration Court in Cleveland, Ohio. Cuni Decl. ¶ 4. On February 2, 2023, that court issued an order denying Petitioner's request for a custody redetermination hearing, finding that the court lacked jurisdiction because Petitioner was not in the custody of ICE or other component agency of the U.S. Department of Homeland Security ("DHS") custody. Cuni Decl. ¶ 4; I-213. In fact, he did not return to ICE custody at that time.

ICE did not again encounter him until May 16, 2026, when ICE Enforcement and Removal Operations' Fugitive Operations team was conducting surveillance targeting another individual at

that target's address, [redacted] Cuni Decl. ¶ 5; I-213. During surveillance, officers observed an individual matching the description of Petitioner inside a vehicle in the driveway of the target's residence. Cuni Decl. ¶ 5; I-213. Officers approached the vehicle and questioned Petitioner to determine if he was their intended target. Cuni Decl. ¶ 5; I-213. Petitioner provided his name and admitted that he was born in Ecuador and illegally entered the U.S. without documents allowing him to remain. Cuni Decl. ¶ 5; I-213. Officers ran database checks on Petitioner, confirmed that he was illegally in the U.S., and issued a Warrant for Arrest of Alien, Form I-200. Cuni Decl. ¶ 5; I-213. At approximately 3:17 p.m., officers arrested Petitioner pursuant to 8 U.S.C. § 1226(a) and transported him to 26 Federal Plaza for processing and custody determination. Cuni Decl. ¶ 5; I-213.

That same day, ICE conducted an individualized custody determination which entailed interviewing Petitioner, obtaining pedigree information, fingerprinting Petitioner for biometrics for criminal checks, obtaining information on any criminal history, family equities, medical issues, or other special vulnerabilities that may impact detention related decisions, and ultimately decided to detain Petitioner. Cuni Decl. ¶ 6; Ex. B to Cuni Decl. ("I-286"). Officers determined that Petitioner had failed to meet his burden of establishing that he was not a flight risk. Cuni Decl. ¶ 6; I-286. At 6:52 p.m., officers completed a worksheet under the settlement in *Velesaca v. Decker, et al.*, No. 20-cv-1080 (S.D.N.Y.). Cuni Decl. ¶ 6; I-286. At 6:58 p.m., officers completed a Notice of Custody Determination, Form I-286, which indicated that Petitioner requested a bond hearing before an immigration judge. Cuni Decl. ¶ 6; I-286. In addition, officers served Petitioner with a Notice to Appear, Form I-862 ("NTA"), charging him as removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). Cuni Decl. ¶ 6.

On May 29, 2026, the Executive Office for Immigration Review ("EOIR") scheduled Petitioner's custody redetermination hearing (*i.e.*, a "bond hearing") for June 2, 2026 at 9:30 a.m.[1] Cuni Decl. ¶ 9. On June 2, 2026, Petitioner appeared with his attorney before the New York Immigration Court for his scheduled bond hearing. Cuni Decl. ¶ 10. Petitioner, through his attorney, withdrew the scheduled bond hearing, requesting more time to prepare. Cuni Decl. ¶ 10. The hearing was adjourned to June 16, 2026 for a master calendar hearing. Cuni Decl. ¶ 10.

II. ICE Properly Detained Petitioner Pursuant to 8 U.S.C. § 1226(a)

Petitioner's habeas suit should be denied because he has been properly detained under 8 U.S.C. s. 1226(a). Under § 1226(a), the Government may arrest and detain an alien during his removal proceedings or release him on bond or conditional parole. Section 1226(a) provides, in relevant part, that:

> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General

[1] Petitioner did not file a request for a bond hearing with EOIR.

> (1) may continue to detain the arrested alien; and
>
> (2) may release the alien on—
>
> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
>
> (B) conditional parole;

8 U.S.C. § 1226(a). By regulation, immigration officers conduct custodial determinations and may release aliens if the alien meets his burden of showing that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8); *see Fontanelli, as Next Friend of Bernal Garcia v. Francis*, No. 25-cv-07715 (JLR), 2025 WL 2773234, at *4 (S.D.N.Y. Sept. 29, 2025) ("The Government's broad [post-arrest detention] discretion under § 1226(a) has a limitation: before the Government may exercise such discretion to detain a person, § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination, specifically whether the noncitizen is a danger to person or property or persons and is likely to appear for any future proceeding.") (citations and internal quotation marks omitted); *Hamilton v. Shanahan*, No. 09-cv-6869 (SAS), 2009 WL 5173927, at *2 (recognizing that the alien bears the burden of proof). Notably, the statute separates arrest from detention, and requires after the arrest and detention, ICE to assess whether the alien should "still be detained." 8 U.S.C. s. 1226(a); s*ee also Velasco Lopez v. Decker*, 978 F.3d 842, 849 (2d Cir. 2020) (referring to "post-arrest custody determination" under § 1226(a); see also attached in relevant part Stipulation and Order of Dismissal and Settlement *Velesaca v. Decker, et al.*, No. 20-cv-1080 (S.D.N.Y.), ECF 177 (requiring that the worksheet laying out the non-exhaustive bases for the custodial determination be completed not prior to arrest but instead within 48 hours after the arrest). As part of this process, the alien who has been arrested is fingerprinted for biometrics, and also, *inter alia*, interviewed for family equities, medical issues, or other special vulnerabilities that may impact detention-related decisions. Cuni Decl. ¶ 6.

Here, the same day of Petitioner's arrest, ICE conducted an initial custody determination, after among other things interviewing the Petitioner, and ultimately elected to detain Petitioner based on his failure to meet his burden of establishing that he was not a flight risk. Cuni Decl. ¶ 6; I-286. Once ICE makes the individualized custody determination, 8 U.S.C. § 1226(e) jurisdictionally bars courts from reviewing that determination. Section 1226(e) provides that "[ICE]'s discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by [ICE] under this section regarding the detention of any [noncitizen] or the revocation or denial of bond or parole." 8 U.S.C. § 1226(e). Thus, "[a] district court has no authority to review ICE's discretionary determinations made under [Section 1226] or otherwise question their propriety." *Fontanelli*, 2025 WL 2773234, at *4 (citing 8 U.S.C. § 1226(e)).

Petitioner still has recourse, but it is administrative, not judicial. To wit, he can request a custody redetermination (*i.e.*, a bond hearing) by an immigration judge at any time before a final

order of removal is issued. *See* 8 C.F.R. § 236.1(d)(1). Under 8 C.F.R. § 1003.19(h)(3), an alien may seek a redetermination of custody conditions set by ICE before an immigration judge must "first demonstrate, by clear and convincing evidence, that release would not pose a danger to other persons or to property. If an alien meets this burden, the alien must further demonstrate, by clear and convincing evidence, that the alien is likely to appear for any scheduled proceeding or interview." *See Hylton v. Shanahan*, 2015 WL 3604328 (S.D.N.Y. June 9, 2015) (declining to shift burden of proof onto government in a bond hearing in immigration court where respondent was detained under § 1226(a)). If dissatisfied with the immigration judge's decision, the alien can seek review by the Board of Immigration Appeals ("BIA"). *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(F), 1003.38, 1236.1(d)(3); *see also Monterosa v. Decker*, No. 20-cv-02653, 2020 WL 1847771, at *3 (S.D.N.Y. Apr. 11, 2020) ("After ICE makes and initial detention decision, any person who is detained has the right to request a bond hearing before an Immigration Judge.").

Here, such a bond hearing was scheduled before an immigration judge for this morning, June 2, 2026 at 9:30 a.m.. The only reason that bond hearing did not occur was because, Petitioner, through his attorney, requested more time to prepare. Cuni Decl. ¶ 10. Thus, Respondents respectfully submit that this Petition be denied, and that Petitioner continue his administrative remedies before the immigration judge, because no bond hearing has occurred (let alone BIA review of such IJ decision, if the outcome were to prove unfavorable to Petitioner). *Id.*

Therefore, Petitioner has not exhausted administrative remedies. Numerous courts in this Circuit have held that to the extent that habeas petitioners want to challenge the initial custody determination, ordinarily they must exhaust administrative remedies before seeking federal court intervention. *See, e.g., Almonte Rojas v. Genalo*, No. 25-cv-6543, 2026 WL 275991, at *1 (E.D.N.Y. Feb. 3, 2026) (Komitee, J.) (citing *Castillo Lachapel v. Joyce*, 786 F. Supp. 3d 860, 864 (S.D.N.Y. 2025)); *accord Fontanelli*, 2025 WL 2773234, at *5-*8. *See also Capunay Guzman v. Joyce,* 786 F.Supp.3d 865, 869-871 (S.D.N.Y. 2025); *Roman v. Decker*, No. 20-cv-3752 (JGK), 2020 WL 4273823, at * 7 (S.D.N.Y. July 24, 2020); *Paz Nativi v. Shanahan*, No. 16-cv-8496, 2017 WL 281751, at *1 (S.D.N.Y. Jan. 23, 2017) ("before immigration detention may be challenged in federal court . . . exhaustion is generally required as a prudential matter" (collecting cases)). The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[ ] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary.'" *Guzman,* 786 F.Supp.3d at 869-871 (*quoting Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.)). As the court in *Castillo Lachapel* explained, "[i]f the immigration judge releases [petitioner] on bond, his [habeas petition would be moot . . . . And even if the immigration judge denies bond, [the] petition could be mooted if the [BIA] reverses that determination." 786 F. Supp. 3d at 864 (internal quotation marks and citation omitted).

Nor do any of the recognized exceptions to exhaustion apply here. A district court may in its discretion excuse exhaustion when "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile and (4) in certain instances a plaintiff has raised a substantial constitutional question." *See Beharry*, 329 F.2d at 62. Numerous courts in this Circuit have also found that none of these exceptions apply where, as here, an immigration judge or the BIA could release a habeas petitioner detained under 8 U.S.C. § 1226(a) on bond. *See, e.g.*, *Castillo Lachapel*, 2025 WL 1685576 at *3; *Capunay Guzman*, 786 F. Supp. 3d at 870; *Monterosa*, 2020 WL 1847771 at *6-*7; *Roman*, 2020 WL 4273823, at *7.

With respect to the first exception, as explained above, Petitioner has available administrative remedies—a bond hearing with an immigration judge *and* appeal of the immigration judge's decision, if adverse, to the BIA. *See Castilla Lachapel*, 2025 WL 1685576, at *3 (describing the two levels of administrative review available to Petitioner). "Because [Petitioner]'s [potential] bond hearing may provide him with the relief that he seeks—*i.e.*, his release—this Court concludes in the exercise of its discretion that [Petitioner] must exhaust these avenues before seeking judicial relief." *Id.* (internal quotations and citations omitted). *See Paz Nativi*, 2017 WL 281751, at *2 ("The pendency of a BIA appeal that could potentially moot [petitioner's] habeas petition counsels for the Court to stay its hand until the exhaustion of administrative review in the name of preserving scarce judicial resources and avoiding the possibility of duplicative or conflicting rulings.").

The second exception is also inapplicable. Petitioner cannot show irreparable harm at this time. Petitioner has been detained for one month 19 days at the time of this filing. The risk of prolonged detention does not constitute an irreparable injury that excuses the prudential exhaustion requirement. *See Michalski v. Decker,* 279 F. Supp. 3d 487, 496 (S.D.N.Y. January 4, 2018); *Capunay Guzman*, 786 F. Supp. 3d at 871; *Roman*, 2020 WL 4273823, at *8.

Similarly, as to the third exception, Petitioner has not shown that a bond hearing would be futile. *See Capunay Guzman*, 786 F. Supp. 3d at 870 (petitioner's "arguments concerning the futility of any bond motion are similarly premature, as he has not yet made a motion for bond"). *See also Cabral v. Decker*, 331 F. Supp. 3d 255, 263 n. 6 (S.D.N.Y. September 21, 2018) ("[T]he question of whether the petitioner's yet-to-happen bond hearing complies with due process is not before this Court.").

With respect to the fourth exception, "[m]ere existence of a constitutional issue . . . does not create an automatic exception to an exhaustion requirement." *Monterosa,* 2020 WL 1847771, at *5. "Thus, when applying this exception, 'courts will endeavor to avoid deciding a constitutional issue if the case might be resolved on a narrower factual basis.'" *Capunay Guzman*, 786 F. Supp. 3d at 871 (quoting *Monterosa*, 2020 WL 1847771, at *5). As the court in *Capunary Guzman* noted, only a few courts in this Circuit have excused exhaustion under the fourth

exception in cases where the petitioner had been detained and denied bond at the bond hearing, or was not yet detained and sought to prevent re-detention. *See id.* (collecting cases). Indeed, where Petitioner has not yet had his bond hearing, through his own decision to delay it, his claims can be mooted by the possibility of being released on bond after exhausting his administrative remedies, and thus [he] has failed to show that the fourth exception to the prudential exhaustion requirement applies. *See id.*

This Petition should be denied, and Petitioner required to continue his administrative remedies, instead of conducting an end run around them by filing the Petitioner and backing out of the scheduled bond hearing.

III. Petitioner's Due Process Claim

Petitioner's Claims in Count One and Two assert a procedural due process violation. Pet. ¶ 13. Specifically, Petitioner contends that he had no opportunity to be heard prior to his arrest and detention, and had no opportunity to be heard following his arrest, including being able to present evidence that he is neither a danger to the community nor a flight risk. *Id.* Petitioner's argument fails.

To demonstrate a procedural due process violation, a plaintiff must establish: (i) a cognizable liberty or property interest, and (ii) a deprivation of that interest without being afforded the process that is due, which process is variable depending on the circumstances. *See Weinstein v. Albright*, 261 F.3d 127, 134 (2d. Cir. 2001) (citing *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976)).

Petitioner cannot satisfy the second factor given that he has already been afforded the process to which he is entitled. Even if Petitioner had challenged the timing of or basis for the custody determination—which he has not—the language of Section 1226(a) distinguishes "arrest" from the word "detention," which is what the statute says follows that arrest, and Congress explicitly uses the phrase "still detained" at the time that the discretionary determination set forth in Section 1226(a) is conducted, which only makes sense if the alien was already detained at the time of that determination. Pursuant to 8 C.F.R. § 236.1(c)(8), immigration officers conduct custodial determinations and may release aliens if the alien meets his burden of showing that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." Logistically, these determinations are completed after arrest, such that officers may obtain information as to a myriad of categories including family equities, medical issues, and other special vulnerabilities that may impact detention-related decisions. Cuni Decl. ¶ 6. That is in fact what happened here.

The post-arrest nature of initial custodial determinations is highlighted in the class action settlement agreement in *Velesaca v. Decker, et al.*, No. 20-cv-1080 (S.D.N.Y.). That settlement agreement, approved by the Honorable Alvin K. Hellerstein, provided a framework to effectuate custodial determinations, including a worksheet to be filled out by officers as to whether Petitioner had established his burdens. Were this Court to find that the custodial determination must be prior not only to the detention but also to the arrest, it would undermine the resolution of the *Velesaca*

class action, which addressed the factors relevant to a custodial determination. Importantly, by the terms of the settlement agreement, this worksheet was to be completed within 48 hours after arrest—not prior to an arrest, and not even immediately after an arrest. This reflected an understanding consistent with the language in the statute, that initial custodial determinations follow arrest.

Here, ICE conducted an initial custodial determination within four hours of his arrest in the field, which includes the time during which he was in transit from the site of the arrest to the hold room, so that his interview, fingerprinting, and other processing could take place. *See* Cuni Decl. ¶ 6. In addition, during ICE's initial custodial determination to determine whether Petitioner was a danger to the community or a flight risk, as noted, officers, *inter alia*, interviewed Petitioner, where he had an opportunity to make his statutorily mandated showing pursuant to 8 C.F.R. § 236.1(c)(8). Cuni Decl. ¶ 6. Thus he received the process he was due. Moreover, this morning, Petitioner was scheduled for a bond hearing where he would have had the opportunity to set forth these same arguments before an immigration judge.[2] The fact bond hearing did not yet take place is by Petitioner's own choosing. Petitioner was afforded the process he was due. As noted above, in Part II, he does still have recourse, but that is to appear before the immigration judge, before whom he declined this morning to make his case.

IV. Contrary to Petitioner's Contention, His Detention is Pursuant to 8 U.S.C. § 1226(a), Not 8 U.S.C. § 1225(b)(2)(A)

Finally, Petitioner argues that he is impermissibly being detained pursuant to 8 U.S.C. § 1225(b)(2)(A). However, as explained in detail, *supra* § II, Petitioner's May 16, 2026 arrest and detention has always been pursuant to 8 U.S.C. § 1226(a). Cuni Decl. ¶¶ 5, 11; I-286. Accordingly, Petitioner's argument is inapposite.

* * *

For the aforementioned reasons, Respondents respectfully request that the Petition be denied. Respondents thank the Court for consideration of this submission.

Respectfully submitted,

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United States Attorney

By: /s/ Nathan Shi
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Encl: Cuni Decl. & Velasaca Stipulation and Order of Settlement, in relevant part
cc: All Counsel of Record (by ECF)

[2] As noted, this bond hearing did not occur today because Petitioner, through his attorney, withdrew the scheduled bond hearing, requesting more time to prepare. Cuni Decl. ¶ 10.